

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW
MINNEAPOLIS

1 ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

2 Edward D. Lodgen, Bar No. 155168
Julia V. Lee, Bar No. 252417
3 2049 Century Park East, Suite 3400
Los Angeles, CA 90067-3208
4 Telephone: 310-552-0130
Facsimile: 310-229-5800

5 Christopher W. Madel
6 MN Reg. No. 230297
Jennifer M. Robbins
7 MN Reg. No. 387745
800 LaSalle Avenue
8 2800 LaSalle Plaza
Minneapolis, MN 55402-2015
9 Telephone: 612-349-8500
Facsimile: 612-339-4181

10 *Attorneys for Defendant Portfolio Recovery
11 Associates, LLC*

12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14
15 JESSE MEYER, an individual, on his own
behalf and on behalf of all others similarly
situated,

16 Plaintiff,

17 v.

18 PORTFOLIO RECOVERY
19 ASSOCIATES, LLC, a Delaware limited
liability company, and DOES 1-100,
20 inclusive,

21 Defendant.

22 No. 3:11-cv-01008-ABJB-RBB

23 Hon. Anthony J. Battalia

24 **REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT PORTFOLIO
RECOVERY ASSOCIATES, LLC'S
MOTION TO STAY ACTION ON
PRIMARY JURISDICTION GROUNDS**

25 Date: June 23, 2011

Time: 1:30 p.m.

Location: Courtroom 12, Second Floor
Edward J. Schwartz Courthouse
940 Front Street
San Diego, California 92101-8900

26
27 [Notice of Motion and Motion to Stay Action
on Primary Jurisdiction Grounds and
Memorandum of Points and Authorities filed
concurrently herewith]

28
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEF'S MOTION TO STAY
ACTION ON PRIMARY JURISDICTION
GROUNDS

1 Pursuant to Federal Rule of Evidence 201(b)(2), PRA respectfully requests that the Court
2 take judicial notice of the following Federal Communication Commission's ("FCC") Notice of
3 Proposed Rulemaking (NPRM), rulings, clarifications, and comments generated in response to
4 the FCC's NPRM:

5 Notice of Proposed Rulemaking, Rules and Regulations Implementing the Telephone
6 Consumer Protection Act of 1991 (proposed January 22, 2010). A true and correct copy is
7 attached hereto as **Exhibit 1**.

8 Comments of Portfolio Recovery Associates, LLC (May 21, 2010). A true and correct
9 copy is attached hereto as **Exhibit 2**.

10 Comment to Proposed Amendments to the Telephone Consumer Protection Act
11 Regulations; Dep't of the Treasury (May 20, 2010). A true and correct copy is attached hereto as
12 **Exhibit 3**.

13 Dep't of Educ. Comments on Proposed Changes to FCC Regulations. A true and correct
14 copy is attached hereto as **Exhibit 4**.

15 Comments of the Nat'l Retail Fed'n (May 21, 2010). A true and correct copy is attached
16 hereto as **Exhibit 5**.

17 Comments of the Fin. Servs. Roundtable, The Am. Bankers Ass'n, and the Consumer
18 Bankers Ass'n (May 21, 2010). A true and correct copy is attached hereto as **Exhibit 6**.

19 Wells Fargo & Co. Comments (May 21, 2010). A true and correct copy is attached hereto
20 as **Exhibit 7**.

21 Comments of JP Morgan Chase & Co. (May 21, 2010). A true and correct copy is
22 attached hereto as **Exhibit 8**.

23 December 3, 2010 Letter to the FCC from Rep. Jim Matheson, et al. (December 3, 2010).
24 A true and correct copy is attached hereto as **Exhibit 9**.

1 ACA Int'l's Comment to the Proposed Amendments to the TCPA Regulations (May 21,
 2 2010). A true and correct copy is attached hereto as **Exhibit 10**.

3 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*,
 4 Report and Order, 7 FCC Rcd 8752, 8773 (1992). A true and correct copy is attached hereto as
 5 **Exhibit 11**.

6 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*,
 7 Memorandum Opinion and Order, 10 FCC Rcd 12391 (1995). A true and correct copy is attached
 8 hereto as **Exhibit 12**.

9 Excerpts from *In the Matter of Rules and Regulations Implementing the Telephone*
 10 *Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 (2003). A true and
 11 correct copy is attached hereto as **Exhibit 13**.

12 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*,
 13 *Request of ACA Int'l for Clarification and Declaratory Ruling*, 23 FCC Rcd 559 (2008). A true
 14 and correct copy is attached hereto as **Exhibit 14**.

15 ACA Int'l's Reply Comment to the Proposed Amendments to the TCPA Regulations
 16 (June 21, 2010), with Exhibit 1, Declarations of Darrin R. Bird, Jeffrey Dantzler, Mark
 17 Laoyteaux, Michael Leraris, John Tallarico, and Michael J. Vesper .A true and correct copy is
 18 attached hereto as **Exhibit 15**.

19 Notice of the foregoing materials is proper pursuant to Fed. R. Evid. 201(b)(2),
 20 authorizing judicial notice of facts "capable of accurate and ready determination by resort to
 21 sources whose accuracy cannot reasonably be questioned." A court may take judicial notice of
 22 matters of public record, such as public court documents, and may consider such documents as
 23 part of a motion to dismiss without converting it to a motion for summary judgment. *See Lee v.*
 24 *City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). Beyond this, it is long established that
 25

“the court may take judicial notice of matters of public record including records and reports of administrative agencies.” *M&Z Cab Corp. v. City of Chicago*, 18 F. Supp. 2d 941, 946 (N.D. Ill. 1998) (citing *United States v. Wood*, 925 F.2d 1580, 1582 (7th Cir. 1991); see *Citizens for a Better Environment-California v. Union Oil Co. of California*, 861 F. Supp. 889, 897 (N.D. Cal. 1994) (nothing that a court “may take judicial notice on [a] motion [to dismiss] of rulings and regulations issued or published by the Regional Board or by EPA”); *Intermedics, Inc. v. Ventritex, Inc.*, 775 F. Supp. 1258, 1261 (N.D. Cal. 1991) (“Facts properly held the object of judicial notice in the context of a motion to dismiss under 12(b)(6) include, among others, records and reports of administrative bodies . . . items in the record of the case or matters of general public record.”); see also *Tucker v. Texas*, 326 U.S. 517, 519 n.1 (1946) (taking judicial notice of regulations promulgated by the Federal Public Housing Authority).

This ability further extends to an agency's proposed rules and proceedings as well as any corresponding request for comments or comments provided in respond to administrative rulings. *See Nw. Envrtl. Advocates v. Met. Transp. Commc'ns*, 366 F.3d 1006, 1026-27 (9th Cir. 2008) (discussing issues within the purview of the Environmental Protection Agency and taking judicial notice the content from the EPA's request for comments); *Bayview Hungers Point Cnty. Advocates v. Metro. Transp. Commc'n*, 366 F.3d 692, 702, n.5 (9th Cir. 2004) (taking judicial notice of the EPA Proposed Rule).

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

DATED: May 18, 2011

By /s/ Julia Veronica Lee

Edward D. Lodgen

Julia V. Lee

Christopher W. Madel

Jennifer M. Robbins

Attorneys for Defendant

PORTFOLIO RECOVERY ASSOCIATES, LLC

CERTIFICATE OF SERVICE

Pursuant to 28 U.S.C. §1746, I hereby certify that I served the attached **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT PORTFOLIO RECOVERY ASSOCIATES, LLC'S MOTION TO STAY ACTION ON PRIMARY JURISDICTION GROUNDS** in the foregoing case upon the parties listed below by causing the foregoing document to be transmitted to the Electronic Filing System in the manner prescribed by the Court's Administrative Policies and Procedures Manual and this Certificate of Service on the date below. I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Robins, Kaplan, Miller & Ciresi L.L.P., 2049 Century Park East, Suite 3400, Los Angeles, CA 90067.

Ethan Preston, Esq.
PRESTON LAW OFFICES
21001 North Tatum Blvd.
Suite 1630-430
Phoenix, Arizona 85050

David C. Parisi, Esq.
Parisi & Havens LLP
15233 Valleyheart Drive
Sherman Oaks, CA 91403

Azita Moradmand, Esq.
Parisi & Havens LLP
15233 Valleyheart Drive
Sherman Oaks, CA 91403

Susanne Havens Beckman, Esq.
Parisi & Havens LLP
15233 Valleyheart Drive
Sherman Oaks, CA 91403

I declare that I am a member of the Bar and permitted to practice before this Court.

Executed May 18, 2011, at Los Angeles, California

s/Julia V. Lee
E-mail: jvlee@rkmc.com